



ENVIRONMENTAL JUSTICE COALITION FOR WATER

April 23, 2010

Joe Yun
Division of Integrated Regional Water Management
California Department of Water Resources
PO Box 942836
Sacramento, CA 94236-0001
Sent via electronic mail

RE: Comments on IRWMP Draft Guidelines and PSPs

Dear Mr. Yun,

I am writing on behalf of the Environmental Justice Coalition for Water and those groups signed below to provide our comments on the draft Integrated Regional Water Management Planning (IRWMP) Guidelines and Project Solicitation Packages. We appreciate the opportunity to comment on this important program.

EJCW and our members see great potential in the IRWMP process. Taking a watershed-wide and integrated approach to water management can only benefit our local communities and our State. We are pleased to be part of the effort to ensure that IRWMPs achieve their highest potential.

We offer the following general comments below and have also attached the word documents in track changes with more specific recommendations.

1) Disadvantaged Communities (DAC)

We would, first like to express our support and appreciation for the renewed commitment to assuring that DAC engagement and benefits that is evidenced in these guidelines and PSPs. As you know, disadvantaged communities have some of the greatest need for water planning, basic wastewater and drinking water resources, and management and yet they were largely left out of previous IRWMP grant distributions. We hope that your improvements in these drafts along with some of the specific suggestions we provide below will reverse this trend and will result in actual implementation projects that address some of the most critical public health water needs in the State.

DAC Recommendations

A. Increase the Implementation Grant Points Awarded for DAC Projects

While points are of diminishing importance under the context of regional allocations, they still guide regions in how they prioritize activities and outcomes. The way that points are currently allocated in the Implementation Grant PSP means that including a DAC project may net a region 2 points. However, they could get that same 2 points if the region includes a drought related project. We believe that Regions should be rewarded for taking on the challenging and resource-intensive responsibility of including DACs in their implementation grants. Successful Regions will have invested in the planning process to conduct active outreach and capacity building in DAC communities to get them to the IRWMP table. Successful Regions will have collaborated with DACs to identify potential project proposals, provide technical assistance to develop the projects, and will have assisted DACs in

shepherding the DAC projects through the process. These activities and efforts should be acknowledged by more than 2 points. Specifically, we recommend:

DAC project inclusion be its own category with a range of 0 to 5 points. The points should be allocated as follows:

- 0 points for regions that do not include any DAC projects in their implementation grant and have failed to identify opportunities to expand projects to provide direct benefits to a DAC unless they have demonstrated that there are no DACs in their region.
- 1 point to a region that has adjusted a project to avoid negative impacts on a DAC.
- 2 points for a region that has expanded a project or adjusted a project to create targeted benefits to one or more DAC in the region.
- 3 points for a region that includes a project developed to provide specific, targeted and isolated benefits to a DAC.
- 4 points for a region that includes a DAC project that demonstrates collaboration and/or integration of a DAC and non-DAC.
- 5 points for a region that includes more than 1 DAC project.

B. Allow Match Reductions or Waivers for Planning Grants

The current draft does not allow funding matches to be reduced or waived for planning grants. We understand that in the Prop 50 program the funding match reduction/waiver did not necessarily correlate with actual DAC outreach and planning. However, we believe that these guidelines and PSPs along with the requirement that no less than 10% of the funds be used to provide direct benefits to DACs has convinced most regions that they must make the effort. We appreciate that DWR is investing in several pilot projects to better define good practices in engaging DACs and producing implementation grant projects, however, we cannot afford to leave DACs in regions without pilot projects further behind. Instead of eliminating the reduction/waiver we recommend that DWR allow for the reduction/waiver under very specific conditions and with a clear set of expected outcomes.

Specifically, we recommend that a planning grant reduction/waiver be available only for the proportion of the grant budget that will be used to conduct the actual DAC outreach and planning so long as:

- The application clearly defines activities and how those activities will be specific to the DACs in their region;
- The applicant has already identified at least one DAC community and/or NGOs that have agreed to partner with the region to undertake the activities, evidenced by a letter from the community or NGO;
- The application includes clearly defined outcomes, one of which should be the development of actual DAC projects for inclusion in the Plan and future Implementation Grants;
- DWR carefully assesses the application and has a reasonable degree of confidence that the activities will achieve the goals and that the goals will result in actual DAC integration into the plan and implementation grants; And,
- DWR writes the Planning Grant contract to indicate that failure to achieve the application's defined outcomes will result in the reduction of the implementation grant amount in the amount of the reduced/waived planning grant match.

Finally, we recommend that the funds generated from reduced implementation grants due to failure to achieve DAC outreach and planning be allocated for DAC projects in that funding area that meet the expanded project criteria defined in the Guidelines:

“Because DACs may not have a developed project to put forward, the types of eligible projects to address critical water supply or water quality needs of a DAC are expanded. Eligible projects in direct support of DACs include feasibility studies that may lead to a construction project to address DAC needs; engineering designs and specifications; or needs assessments where a critical water supply or quality issue is perceived but specific needs have not been determined.” pages 18-19

C. Allow Regions Flexibility In the Timing of Planning and Implementation Grants and Allow Sufficient Time Between Planning and Implementation Grant Distribution

As you know, “shovel ready” requirements have been a major impediment to identifying and funding DAC projects. In addition, the issuance of the implantation grant PSP 6 months prior to the completion of the planning grant process sent the wrong message to regions about the importance and value of engaging in real planning as opposed to engaging in a process of “checking boxes” to meet necessary criteria to be eligible for funding. Simultaneous grant processes also serve to leave Regions lacking approved plans farther behind as they compete for funds with more resourced Regions.

To address these concerns we recommend that DWR allow sufficient time between the award of planning grant dollars and implementation grant dollars. With the new Proposition 84 requirements there is not a single region that would not benefit from spending more time planning and updating their plan. There is no reason to rush into an implementation grant process.

In addition, we recommend that DWR provide Regions the flexibility to negotiate the roll out of funds between planning grants and implementation grants. This might include the option of deferring a smaller implementation grant award for a future round of funding where the initial award might be added to a subsequent award to allow the region to be more strategic in the combination of projects they fund.

Finally, providing sufficient time between implementation grants and planning grants will also solve a current conflict in the draft guidelines. According to the draft guidelines, if an IRWMP does not have a process for adding projects they are limited to the project list in their adopted IRWMP (pages 15-16). Because many regions were not successful in identifying and including DAC projects in their first planning cycle this could become a new impediment to funding DAC projects. Instead, providing sufficient time for planning would allow DWR to require that all plans have a process for adding projects and will further allow regions without a process for adding projects to amend their plans to create a process and to add appropriate projects, including DAC projects.

D. Connect Regions to Other Agencies that Collect DAC Project Applications

We continue to hear from regions that assert that there are no DAC-specific projects in their regions. However, we know that the State Water Board (SWRCB) small community wastewater program and the Department of Public Health’s (CDPH) Safe Drinking Water program have DAC project applications from virtually every region in the State. Even in larger urban areas, there are almost always smaller systems that serve more recent community developments. Quite often these systems are serving

disadvantaged communities. The Projects lists held by SWRCB and CDPH can provide quick reference lists for regions who cannot otherwise find their DACs. Specifically we recommend:

- DWR work with SWRCB and CDPH to organize their DAC project lists by IRWMP region and to distribute those regional project lists to the appropriate regions and on the DWR IRWMP website to assist regions in identifying DAC projects.
- DWR provide contact information for key staff in each agency on the IRWMP site for quick reference.
- DWR require regions that fail to incorporate these project lists into their IRWMPs to provide explanation for that failure and that implementation grant points diminish accordingly.

2) Tribal Recommendations

We would also like to express our support and appreciation for the specific mention and focus on California Tribes. Tribes were deemed ineligible for previous rounds of funding and we are glad to see that they are specifically listed as eligible for Proposition 84 IRWMP funding. Including Tribes maximizes the efficacy of IRWMP funds since watersheds do not begin and end at Tribal land boundaries. Further, some Tribes are taking responsibility for water infrastructure in communities where tribal members and non-tribal members live. It only makes sense that they should be part of an integrated solution. We offer the following recommendations to ensure that integration of Tribes is respectful of the special sovereign nature of Tribes, but still provides for the collaboration and integration of Tribal projects.

A. Provide Regions With Guidance Regarding What Tribal Sovereignty Means

Not surprisingly, many regions struggle to understand Tribal sovereignty and end up developing misunderstandings. For instance, in one region Tribes were likened to NGOs or local government agencies. In fact, the closest comparison one can make is that Tribes are akin to the Federal government. In another region Tribes were lumped together as one single entity. In fact, every Tribe is its own independent sovereign nation and asking one Tribe to represent another is like asking the U.S. to agree to allow Mexico to represent our interests. We offer the following recommendations to promote necessary understanding:

- Provide guidance in the guidelines that assists regions in understanding the unique status of Tribes;
- Direct regions to the Natural Heritage Commission's list of California Tribes to help them identify Tribes in their Region; and,
- Require regions to include Tribes, both existing reservation land and ancestral land, in all maps of the region.

B. Assure that Tribes are Gaining Access to IRWMP Funding

As with DACs, the ultimate goal is to promote cooperation, integration, and actual funding to address the water-related needs of Tribes. To accomplish this we offer the following recommendations:

- Require that Plan Updates include a description of the Tribes in the region and evidence that multiple efforts were made to reach out to the Tribes;
- Award extra planning grant points to regions that have collaborated with Tribes to develop specific activities and outcomes to develop either a tribal consultation process or to integrate Tribes into the IRWMP – as evidenced by a letter of support from at least one Tribe in the region; And,

- Award extra implementation grant points to regions that have developed successful Tribal participation or consultation **and** that include Tribally-initiated projects in the implementation grant application.
- Specifically identify the increase of “in-stream flow” that improves Tribal ecosystems as a preferred project type.

3) Improve the Climate Change Guidance and Requirements

Whether formally acknowledged or not, the fact is that DACs are already suffering the water-related impacts of climate change. DACs have the fewest resources to adapt to or mitigate the impacts of climate change and are the least likely to have the resources to recover from climate/water related impacts like flooding. Conversely, Tribes, having proven their ability to adapt to changing conditions over the course of thousands of years, are an underutilized regional resource for assessing risks and developing climate-resilient strategies. We cannot afford to invest the limited IRWMP resources available in strategies and projects that will not stand up to changing climate conditions. The guidelines and PSPs must set out clear expectations and provide the time and resources necessary to shift thinking, find the necessary expertise, and be flexible enough to fund projects that will both reduce the green house gas production inherent in moving and using water and projects that are designed to anticipate changes in patterns of precipitation, sea level rise, and water demand. We offer the following recommendations:

A. Integrate Climate Change Into All IRWMP Elements Including DAC

The current organization of the guidelines makes climate change appear to be a new program element. Instead, climate change should be a criterion that is integrated into all of the existing plan elements, including the DAC element. We appreciate DWR’s recognition that many agencies and regions do not have strong existing capacity on climate change and have definitely heard from various regions some fear and reticence to embrace climate change as part of the IRWMP. We do not, however, believe that delaying implementation is the answer.

We also recognize that there are varying degrees of certainty about potential impacts of climate change depending on the scale of analysis and that research in some regions is far ahead of research in other regions. Fortunately, designing climate-resilient water projects is not contingent on a thorough regional analysis of climate change in most cases. Designing projects that reduce energy use, implement low-impact development, reduce pollution, conserve water, etc. are likely to be climate resilient no matter the specific pattern of climate change a region is likely to expect. Instead of letting regions off the hook until new data is available we should be encouraging regions to implement what we already know to be climate resilient projects. We do, however, offer one precaution. Many DAC projects are very basic public health projects that may, or may not, lend themselves easily to climate-related modifications. We hope that DWR will provide guidance and leadership that encourages the regions to design these projects to be climate-resilient, but would also recommend that basic public health projects that fail to do so not lose priority for funding.

Specifically, we recommend:

- DWR develop a ramping up of climate-related expectations in the guidelines and PSPs that begins with guidance on existing climate-resilient projects and project modifications that are unlikely to produce any regrets no matter the actual pattern of climate-related change a region can expect;

- DWR provide incentives for regions to take on the task of doing their own analysis of how climate change will impact water in their region and even greater incentives to regions that use a scale of analysis that will illuminate particular climate-related issues likely to be faced by DACs in their region;
- DWR provide workshops and lists of experts that regions can make use of to assist them in the analysis of their existing projects and in the update of their plans and development of new climate resilient projects;
- DWR work with regions to review projects prior to application and provide feedback and advice regarding how to further develop projects to maximize climate resilience; and
- Consistent with the vital importance of investing in climate resilient projects, and the need to integrate climate into all elements of the regional plans, adjust scoring criteria so that the award of full points reflects integration of climate resilience.

4) Governance and Stakeholder Participation

We have previously asserted that plans with the most open governance structures and the most robust stakeholder processes have produced the IRWMPs that are the closest to achieving the full potential of the IRWMP process. With funding allocated by funding area, according to Proposition 84, DWR will have fewer scoring levers, particularly where a funding area has only one region, to assure that regions are maximizing participation, and by virtue, the potential of the IRWMP. We appreciate the inclusion of new language on governance and stakeholder participation prompted by the language in SB1XX, but we also urge DWR **not** to see the language in SB1XX as the bar to reach for, but as a floor that everyone must meet at a minimum. To encourage regions to maximize participation we recommend the following:

- Provision of more guidance in the guidelines regarding how participation can be maximized in the governance structure while minimizing issues of liability;
- Provision of advice in the guidelines regarding how to maximize participation in governance if a region has selected a JPA as their governance structure, including a discussion of the limited flexibility allowed in the law for NGOs and Tribes to participate in JPAs;
- Review of planning grant budgets and appropriate scoring to assure that ample resources are being allocated toward outreach and engagement of stakeholders; and
- Provision of specific advice and review and scoring of proposals that reflects the need for and investment in technical assistance for DACs both to build the capacity necessary to participate and to provide assistance with the development of project proposals.

5) Suggestions for Editing Guideline and PSP Language

Attached you will find copies of the Word Documents in track changes with our specific recommendations for language changes that will help to achieve some of the recommendations we provide above and that we believe will clarify some elements that were unclear to us as we read through the documents. Here we provide some general comments that are included in our document edits, but that we would like to draw your attention to.

- **Regions that have yet to receive funding should be provided extra assistance and receive priority in future funding rounds.** Every region of the State has critical water-related needs and in many cases those regions with the fewest resources to engage in an IRWMP are the most vulnerable and have the greatest need. Because of the abbreviated timelines for funding applications and “readiness to proceed” criteria the first rounds of IRWMP funding widened the gap between more resourced regions and less resourced regions. We urge DWR to take actions to ensure that Proposition 84 funding closes the gap

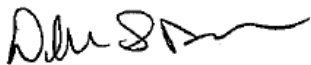
between regions that received funding in earlier funding rounds and those that did not. Specifically, we recommend:

- Regions not previously funded receive preference for future funding so long as their plans meet minimum requirements;
- DWR prioritize holding Applicant Assistance Workshops in regions not yet receiving IRWMP funding.
- **Encourage regions to continue to prioritize projects and not to create project laundry lists.** These draft guidelines eliminate the project prioritization process that was in the Proposition 50 guidelines. By eliminating the prioritization process we risk plans that are bloated with every project submitted to each region. While the prioritization process was challenging in most regions, it did create new opportunities for prioritized projects to access other funding sources beyond IRWMP. A bloated list would set regions up in the same way advance projects for other funding sources that reflect regional priorities and help achieve the outcomes defined in the IRWMP.

In closing, we wish to express our appreciation to DWR for the excellent improvements they have made over the Proposition 50 guidelines and look forward to working together to achieve the full potential inherent in the IRWMP process.

Thank you again for the opportunity to comment.

Sincerely,



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